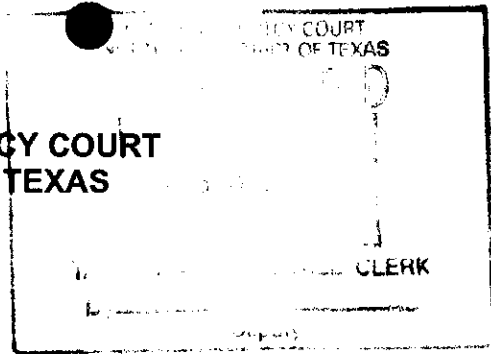


**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**



In re:

WINDMERE ASSOCIATES,
a Connecticut limited partnership,

Debtor

§
§
§
§
§
§

Case No. 02-31412-BJH
Chapter 11

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CONFIRMING MODIFIED FIRST AMENDED
PLAN OF REORGANIZATION OF WINDMERE ASSOCIATES**

At 9:00 a.m. on August 29, 2002, pursuant to this Court's Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof (the "Disclosure Statement Order"), the Court considered confirmation of the Modified First Amended Plan of Reorganization dated July 30, 2002 (the "Plan") filed by Windmere Associates ("Debtor"¹) pursuant to Code §1129 (the "Confirmation Hearing"). On July 30, 2002, Debtor filed a Certificate of Service indicating that Debtor mailed the solicitation materials for the Plan in accordance with the Disclosure Statement Order (the "Service Declarations"). On August 28, 2002, Debtor filed the Tabulation of Ballots Regarding Vote on Debtor's Modified First Amended Plan of Reorganization (the "Voting Declaration"). No objections to confirmation of the Plan have been filed by any party-in-interest in this proceeding.

The Court, having (i) reviewed the Plan, the Modified First Amended Disclosure Statement (the "Disclosure Statement"), the Disclosure Statement Order, the Voting

¹ Capitalized terms used but not defined herein have the meanings assigned to them in the Plan (as defined herein). In addition, any term used in the Plan or this Order that is not defined in the Plan or this Order, but that is used in the Bankruptcy Code ("Code") or the Bankruptcy Rules ("Rules"), will have the meaning given to that term in the Code or the Rules, as applicable.

106

Declaration, and the Service Declarations; (ii) heard counsel's statements supporting confirmation of the Plan and considered all testimony presented and evidence admitted at the Confirmation Hearing, as reflected in the record; (iii) taken judicial notice of the pleadings on file in Debtor's case; and (iv) found that notice of the Confirmation Hearing and the opportunity for parties in interest to object to confirmation were adequate, in accordance with Rule 2002(b), as to all parties to be affected by the Plan, hereby finds, concludes and orders as follows²:

I. FINDINGS OF FACT.

A. JURISDICTION AND VENUE.

On February 19, 2002, Debtor commenced its reorganization case by filing a voluntary petition for relief under Chapter 11 of the Code. Debtor was and is qualified to be a debtor under Code §109. The principal place of business of the General Partner of Debtor is in Dallas, Texas. Venue in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, for Debtor's reorganization case was as of the Petition Date, and continues to be, proper under 28 U.S.C. §1408.

B. COMPLIANCE WITH THE REQUIREMENTS OF CODE §1129.

1. The Plan complies with all applicable provisions of the Code as required by Code §1129(a)(1).

2. Pursuant to Code §§1122(a) and 1123(a)(1), Article III of the Plan designates Classes of Claims and Interests with each Class of Claims and Interests containing only Claims or Interests that are substantially similar to the other Claims and

² This Order constitutes the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Rules 7052 and 9014. Any finding of fact will constitute a finding of fact even if it is stated as a conclusion of law, and any conclusion of law will constitute a conclusion of law even if it is stated as a finding of fact.

Interests within that Class. Claims are classified in Classes 1 through 4 while Interests are classified in Classes 5 and 6. This classification is proper under Code §1122(a) as such Claims and Interests have different rights among each other and against the assets of Debtor. Pursuant to Code §1123(a)(4), Article IV of the Plan specifies the treatment of all Classes of Claims against and Interests in Debtor and provides the same treatment for each Claim or Interest within each Class.

3. Provisions of the Plan, including its Article V, provide adequate means for the Plan's implementation as required by Code §1123(a)(5). These provisions include: (i) the contribution of \$500,000 of Reorganization Capital by the Partners of Debtor in exchange for the issuance of Class A Interests in Debtor; (ii) the reclassification of Pre-Petition Date Interests as Class B Interests; (iii) the future refinancing of the secured debt and the proposed acquisition of the interests of Columbia in the Property, using the Reorganization Capital and other funds available to Debtor to pay the associated costs; and (iv) the adoption of the Second Amended and Restated Limited Partnership Agreement (the "Partnership Agreement"). Debtor will have sufficient cash to make all payments required by the Plan on the Effective Date.

4. The Plan does not contemplate issuing nonvoting equity securities.

5. Pursuant to Code §1123(b)(1), Article IV of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests.

6. In accordance with Code §1123(b)(2), Article VI of the Plan provides for the assumption of all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected pursuant to Code §365 and appropriate orders of this Court. Section 6.01 constitutes a motion by Debtor pursuant

to Code §365, which is hereby approved, to assume all of its executory contracts and unexpired leases and provides for the payment of cure amounts associated with each such executory contract and unexpired lease in accordance with Code §365(b)(1). Cure payments will be determined pursuant to the underlying agreements, the Plan, and applicable law. *The Court will resolve any disputes as to cure payments amounts.*

7. Section 5.01 of the Plan provides that Debtor will retain and may enforce any claims, demands, rights, and causes of action that Debtor or its estate may hold against any entity, preserving all causes of action for the benefit of Debtor.

8. The Plan leaves unaffected the rights of holders of Claims, except for the Claim held by an "insider" of Debtor, as permitted by Code §1123(b)(5).

9. Debtor, the proponent of the Plan, has complied with all applicable Code provisions as required by Code §1129(a)(2). *The Disclosure Statement and the procedures by which ballots accepting or rejecting the Plan were solicited and tabulated were (a) fair, (b) proper, and (c) in accordance with Code §§1125 and 1126, Rules 3017 and 3018, and the Disclosure Statement Order.* Debtor and its partners, agents, and professionals have acted in "good faith," within the meaning of Code §1125(e).

10. As required by Code §1129(a)(3), based on the uncontroverted evidence, Debtor proposed its Plan (a) in good faith and not by any means forbidden by law and (b) with the legitimate and honest purpose of reorganizing the business affairs of Debtor and maximizing the returns available to the Claimants of and holders of Interests in Debtor. Moreover, the Plan resulted from arms' length negotiations among Debtor and the Committee, does not impair Claimants (other than an "insider" of

Debtor), and was overwhelming supported by the holders of Interests, providing independent evidence of Debtor's good faith in proposing the Plan.

11. As contemplated by Code §1129(a)(4), Section 4.01 of the Plan provides that professionals or other entities asserting administrative claims for services rendered before the Effective Date are required to file applications for compensation and reimbursement of expenses. Such applications must be filed no later than 45 days after the Effective Date. The Court will review the reasonableness of such applications under Code §§328 and 330 and applicable case law. Section 8.02 of the Plan provides that the Court will retain jurisdiction after the Effective Date to hear and determine all requests for compensation or reimbursement of expenses for professionals.

12. Debtor has identified the individuals that will serve as the directors and officers of the General Partner of the Reorganized Debtor, and the compensation to be paid to such General Partner; their service is consistent with the interests of holders of Claims and Interests and public policy as required by Code §1129(a)(5).

13. Debtor's business does not involve establishing rates over which any regulatory commission has or will have jurisdiction after confirmation under Code §1129(a)(6).

14. As required by Code §1129(a)(7), each holder of a Claim or Interest in each impaired Class has accepted the Plan or, as demonstrated by the liquidation analysis included as an exhibit to the Disclosure Statement and other evidence presented at the Confirmation Hearing, will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less

than the amount such holder would receive or retain if Debtor was liquidated on the Effective Date under Chapter 7 of the Code.

15. Each Class of Impaired Claims and Interests has accepted the Plan as required by Code §1129(a)(8). Classes 1, 2 and 3 are unimpaired and are deemed to have accepted the Plan. Class 4, the only impaired class of Claims, and Class 6, consist solely of "insiders" and have accepted the Plan. Class 5, an impaired Class of Interests, has accepted the Plan.

16. The Plan treats allowed Administrative Claims and Allowed Priority Claims in the manner required by Code §1129(a)(9). To the extent not previously paid, Allowed Administrative Claims and Allowed Priority Claims, to the extent not previously paid, will be paid by the Reorganized Debtor (1) in full, in cash, on the Effective Date, (2) if a trade or other payable that is a current obligation of Debtor, in the ordinary course of business, (3) on such terms as may be agreed to in writing by such Claimant and the Reorganized Debtor, or (4) as and when allowed by the Court. On the Effective Date, the Reorganized Debtor will pay all amounts necessary to cure any defaults under the executory contracts and unexpired leases being assumed.

17. No non-insider class of Claims is impaired under the Plan, making Code § 1129(a)(10) inapplicable.

18. The Plan is feasible as required by Code §1129(11). Confirmation of the Plan is not likely to be followed by liquidation of, or the need for further financial reorganization of the Reorganized Debtor.

C. EXEMPTION FROM TAXATION.

All transfers contemplated by the Plan, including the issuance of the Class A Interests, will be free and clear of any and all transfer taxes as provided by Code §1146(c). Pursuant to Code §1146(c), all filing officers (including without limitation those state, county, city, and local authorities of Connecticut, New Jersey, Texas, or any of the United States) are directed to accept for recording or filing, and to record or file, those Plan documents, including a Certificate of Amendment relating to the Partnership Agreement and a certified copy of the Plan and this Order, which are presented to them for recording or filing immediately upon presentation thereof, and such filing or recordation of such Plan documents are exempt from, and will not be taxed under, any state or local law imposing a recording, stamp, transfer, sales or similar tax.

D. COMPLIANCE WITH CODE §1129.

The Plan complies with the applicable requirements of Code §1129.

III. ORDER.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

A. CONFIRMATION OF THE PLAN.

The Plan and each of its provisions will be, and hereby is, confirmed in each and every respect pursuant to Code §1129; provided, however, that if there is any direct conflict between the terms of the Plan and the terms of this Order, the terms of this Order will control.

B. EFFECTS OF CONFIRMATION.

1. Pursuant to Bankruptcy Rule 3020(e), subject to the provisions of the Plan, and notwithstanding any otherwise applicable law, upon the entry of this Order, the terms of the Plan and this Order will be, and hereby are, deemed binding

upon Debtor, the Reorganized Debtor, all holders of Claims or Interests (irrespective of whether such Claims or Interests are impaired under the Plan or whether the holders of such Claims or Interests accepted, rejected, or are deemed to have accepted or rejected, the Plan), all non-debtor parties to executory contracts and unexpired leases and all other entities who are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described herein above and the respective heirs, executors, administrators, successors, or assigns, if any, of any of the foregoing.

2. Title to the property, real or personal, of Debtor or its estate will vest in the Reorganized Debtor on the Effective Date as provided in the Plan.

3. On the Effective Date, the Partnership Agreement will be deemed to have been approved by the Partners of Debtor and will be in full force and effect and the Pre-Petition Date Interests held by Limited Partners will automatically become Class B Interests pursuant to the Plan and the Partnership Agreement. The General Partner of the Reorganized Debtor is directed to complete Exhibit A to the Partnership Agreement once it has collected the Reorganization Capital contemplated by the Plan.

C. CLAIMS BAR DATES.

1. Except as provided below, requests for payment of Administrative Claims must be filed and served on Reorganized Debtor, except that professionals or other entities asserting an Administrative Claim for services rendered before the Effective Date pursuant to Code §503(a)(1) must file and serve an application for final allowance of such Administrative Claim on the Reorganized Debtor and such other entities who are designated by the Rules or an order of the Court, no later than 45 days after the Effective Date,. Holders of such Administrative Claims that are required to but do not file and serve a request for payment of such Claims by the applicable bar date

will be forever barred from asserting such Claims against Debtor, the Reorganized Debtor, or their respective property, and such Claims will be deemed discharged as of the Effective Date. Objections to such requests must be filed and served on the Reorganized Debtor and the requesting party by the later of: (i) 60 days after the Effective Date; and (ii) 20 days after the filing of the applicable request for payment of Administrative Claims. The Court will resolve any objections to the requests for payment of Administrative Claims, including those for fees and expenses of professionals, after notice and hearing.

2. Holders of Administrative Claims based on liabilities incurred by Debtor in the ordinary course of its business need not file or serve any request for payment of such Claims. Such claims will be paid pursuant to Plan Section 4.01.

3. On the Effective Date, the Reorganized Debtor will pay all allowed Administrative Claims and Priority Claims pursuant to Article IV of the Plan.

4. On and after the Effective Date, the Reorganized Debtor will timely pay all fees due to the United States Trustee pursuant to 28 U.S.C. §1930(a).

5. Notwithstanding confirmation of the Plan, Debtor or the Reorganized Debtor will abide by the terms of any cash collateral order of this Court until the Effective Date. On the Effective Date, the cash collateral orders entered in the case will become null and void.

6. On or immediately after the Effective Date, (a) the Reorganized Debtor will enter into the Escrow Agreement as contemplated by the Plan; (b) all Reorganization Capital will be delivered to the Escrow Agent; and (c) Debtor will file an

appropriate Certificate of Amendment, reflecting the adoption of the Partnership Agreement, with the Secretary of State of Connecticut.

7. The Bank and JCI will retain their liens in their respective collateral to secure repayment of their claims according to Sections 4.02 and 4.03 of the Plan.

8. On the Effective Date, the Reorganized Debtor will administer the operations and affairs of the Debtor and Reorganized Debtor and have the authority to take any action and execute any documents for Debtor and Reorganized Debtor.

9. Except as otherwise provided in the Plan or a contrary ruling of the Court, the allowance of any pre-petition Claim, the resolution of any Disputed Claim, or the payment of such Claims will not bar, by application of the principles of res judicata or collateral estoppel, the recovery of pre-petition Claims or the exercise of any right of setoff held by Debtor with respect to the Claims held by the affected Claimants. To the extent such right of offset is not resolved in the Claim objection process, any affected Claimant will retain its right of offset of mutual claims as provided in Code §553.

10. Except as otherwise provided in the Plan and this Order, and as to acts or omissions that are the result of fraud, gross negligence, willful misconduct or a willful violation of federal or state securities laws or the Internal Revenue Code, any consideration distributed under the Plan will be in full exchange for and in complete satisfaction, discharge and release of all Claims, liens, encumbrances, and causes of action of any Creditor or Interest Holder against and/or relating in any way to Debtor or any of its property, former or current partners, agents or attorneys, and such Claims, liens, encumbrances, and causes of action are deemed extinguished, released, compromised, settled, and discharged, and will not be asserted or pursued in any

manner against Debtor, the Reorganized Debtor or against its property, former or current partners, agents or attorneys after the Effective Date. Confirmation of the Plan will not extinguish, modify, change, or alter in any way, any Claims, rights, or remedies which any Creditor may have or come to have against an entity other than Debtor or the Reorganized Debtor which arise out of any guarantee of any of Debtor's obligations. Subject to Code §§524 and 1141, the releases described above will not preclude police, federal tax, or regulatory agencies from fulfilling their statutory duties.

11. All injunctions or stays provided for in the case pursuant to Code §§105 or 362 or otherwise existing on the Confirmation Date will remain in full force and effect to the extent allowed by the Code.

12. The securities to be issued pursuant to the Plan, including the *Class A Interests and the Partnership Agreement*, will be issued without registration under the Securities Act of 1933, as amended (the "1933 Act") or under any state or local securities laws, in reliance upon the exemptions from registration under the several federal and state securities acts afforded by Code §§1125 and 1145. Debtor is not currently making, nor is it required to make, periodic filings under the 1934 Act.

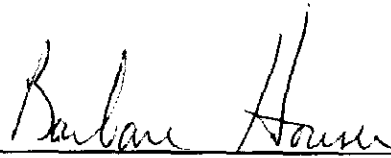
D. SUBSTANTIAL CONSUMMATION.

Substantial consummation of the Plan, within the meaning of Code §1127, will be, and hereby is, deemed to occur on the Effective Date. Notwithstanding anything to the contrary herein or in the Plan, the Effective Date will mean the day after the Plan has been confirmed by the entry of this Order, which Order has not been vacated, reversed or stayed.

E. NOTICE OF ENTRY OF ORDER.

Pursuant to Rules 2002(f)(7) and 3020(c), the Reorganized Debtor will be, and hereby is, directed to serve a notice of the entry of this Order and the establishment of Bar Dates for certain Administrative Claims hereunder (the "Confirmation Notice"), on all parties that received notice of the Confirmation Hearing, no later than 20 business days after the below date; provided, however, that Reorganized Debtor will be obligated to serve the Confirmation Notice only on the record holders of Claims and Interests as of such date.

Dated: August 29, 2002



BARBARA J. HOUSER
UNITED STATES BANKRUPTCY JUDGE

19. Section 4.01 of the Plan provides that the Reorganized Debtor will timely pay all fees to the United States Trustee pursuant to 28 U.S.C. §1930(a) when said fees become due as required by Code §1129(a)(12).

20. Code §1129(a)(13) is not applicable.

21. The primary purpose of the Plan is not to avoid taxes or the requirements of Section 5 of the Securities Act.

22. All releases of Claims and causes of action against non-debtor persons or entities that are embodied within the Plan are fair, equitable, and in the best interests of Debtor and its estate.

II. CONCLUSIONS OF LAW.

A. JURISDICTION AND VENUE.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1134. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Debtor was, and is, qualified to be a debtor under Code §109. Venue of Debtor's case in the United States Court for the Northern District of Texas, Dallas Division, was as of the Petition Date, and continues to be, proper pursuant to 28 U.S.C. §1408.

B. EXEMPTION FROM SECURITIES LAWS.

Pursuant to Code §1125(e), Debtor's transmittal of the Plan solicitation packages and its solicitation of acceptances of the Plan is not governed by nor subject to, any otherwise applicable law, rule, or regulation governing the offer, issuance, sale, or purchase of securities. Debtor, the Reorganized Debtor, the Committee, and their respective partners, agents, and professionals (acting in such capacity) are accordingly entitled to the protection of Code §1125(e).